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HOUSE BILL 835

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Raymond G. Sanchez

AN ACT

RELATING TO RISK MANAGEMENT; PROVIDING THAT CERTAIN STATE EDUCATIONAL INSTITUTIONS MAY ELECT TO COVER RISKS THROUGH THE PUBLIC LIABILITY FUND OR BY CERTAIN OTHER METHODS; PROVIDING FOR THE REIMBURSEMENT OF THE PUBLIC LIABILITY FUND IN CERTAIN CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-4-20 NMSA 1978 (being Laws 1978, Chapter 166, Section 3, as amended) is amended to read:

"41-4-20. COVERAGE OF RISKS--INSURANCE. --

A. It [~~shall be~~] is the duty of governmental entities to cover every risk for which immunity has been waived under the provisions of the Tort Claims Act or any liability imposed under Section 41-4-4 NMSA 1978 as follows:

- (1) local public bodies shall cover every

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1 such risk or liability as follows:

2 (a) for a risk for which immunity has
3 been waived pursuant to Sections 41-4-9, 41-4-10 and 41-4-12
4 NMSA 1978, the local public body shall cover the risk, and for
5 any commercially uninsurable risk for which public liability
6 fund coverage is made available, the local public body may
7 insure the risk in accordance with the provisions of Section
8 41-4-25 NMSA 1978;

9 (b) for excess liability for damages
10 arising under and subject to the substantive law of a
11 jurisdiction other than New Mexico, including but not limited
12 to other states, territories and possessions and the United
13 States [~~of America~~], the local public body shall provide
14 coverage in accordance with the provisions of Subsection B of
15 Section [~~41-4-27~~] 41-4-28 NMSA 1978, if coverage is available;
16 and

17 (c) for a risk or liability not covered
18 pursuant to Subparagraphs (a) and (b) of this paragraph, the
19 local public body shall purchase insurance, establish reserves
20 or provide a combination of insurance and reserves or provide
21 insurance in any other manner authorized by law; [~~and~~]

22 (2) for state agencies, except as provided in
23 Paragraph (3) of this subsection, the risk management division
24 shall insure or otherwise cover every such risk or liability
25 in accordance with the provisions of Section 41-4-23 NMSA

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1 1978. Coverage shall include but is not limited to coverage
2 for all such liability arising under and subject to the
3 substantive law of a jurisdiction other than New Mexico,
4 including but not limited to other states, territories and
5 possessions and the United States [~~of America~~]; and

6 (3) in lieu of coverage pursuant to Paragraph
7 (2) of this subsection, the governing body of a state
8 educational institution described in Article 12, Section 11 of
9 the constitution of New Mexico may elect to cover every risk
10 and liability by the purchase of insurance, the establishment
11 of reserves or a combination of insurance and reserves;
12 provided that, if an election is made pursuant to this
13 paragraph:

14 (a) the governing body shall also
15 negotiate with the risk management division, and employ an
16 independent third-party mediator if necessary, to develop a
17 plan to reimburse the public liability fund for any amount
18 paid by the public liability fund on behalf of the institution
19 to the extent that the liability exceeds the sum of the total
20 premiums paid to the public liability fund by the institution
21 plus interest earned by the public liability fund on the
22 premiums; provided that the reimbursement plan shall be
23 designed to avoid undue financial hardship on the institution
24 and to preserve the financial viability of the public
25 liability fund. If the governing body and the risk management

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1 division cannot agree on a plan, the matter shall be conducted
2 pursuant to the provisions of the Uniform Arbitration Act;
3 provided that the arbitration shall be conducted and decided
4 by a single arbitrator, knowledgeable in insurance matters and
5 selected by the chief judge of the first judicial district;
6 and

7 (b) the governing body may not revoke
8 the election and again be covered pursuant to Paragraph (2) of
9 this subsection for a period of two years after the election
10 is made.

11 B. The department of finance and administration
12 shall not approve the budget of any governmental entity that
13 has not budgeted an adequate amount of money to insure or
14 otherwise cover pursuant to this section or Section 3-62-2
15 NMSA 1978 every risk of the governmental entity for which
16 immunity has been waived under the provisions of the Tort
17 Claims Act or liability imposed under Section 41-4-4 NMSA
18 1978. The [~~public school finance division of the department~~
19 ~~of finance and administration~~] state department of public
20 education shall not approve the budget of any school district
21 [~~which~~] that has failed to budget sufficient revenues to
22 insure or otherwise cover pursuant to this section every risk
23 for which immunity has been waived pursuant to the provisions
24 of the Tort Claims Act or liability imposed under Section
25 41-4-4 NMSA 1978.

1 C. No liability insurance may be purchased by any
2 governmental entity other than as authorized by the Tort
3 Claims Act. "

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